HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO. 12225 OF 2000

Between:

Grand Kakatiya Sheraton Hotel and Towers, Employees and Workers Union

...Petitioner

AND

Assistant Commissioner of Labour Circle II, T. Anjaiah Bhavan and two others

....Respondents

HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT PETITION NO. 12225 OF 2000

ORAL ORDER:

Questioning the inaction on the part of the first respondent in acting upon the representation dated 24.5.2000 made complaining of unfair labour practices indulged in by the second respondent, petitioner filed this petition.

(2) The averments in brief, in the affidavit of S. Muralikumar, General Secretary of the

petitioner Union, filed in support of the petition are, he as the designated General Secretary and the other workers in the second respondent submitted an application under Section 4(1) of the Trade Union Act, to the first respondent for registration of their Union on 17.5.2000, along with a complaint setting out the various violations of the labour laws in the second respondent establishment. After the first respondent and the other officers in the labour department started marking verifications on that application, the management of the second respondent, having come to know that he is the designated General Secretary of the proposed trade union of its workmen, as a measure of his transfer in disguise, in violation of entry 7 of the 5th Schedule of the Industrial Disputes Act ('the Act'), directed him to proceed for training to Gurgaon, with a view to stall the formation of the trade union. As he was not physically fit to undertake a long journey he expressed his inability to leave for training he attended duty as usual on 24.5.2000. On 25.5.2000 the Security Officer prevented him and physically pushed him out, and placed a train ticket to Delhi in his hand and informed that the management wanted him to leave for Gurgaon immediately. In view of his health condition he applied for leave on medical grounds and stayed back. On 26.5.2000 four other signatories to the application for registration of the Union went to the Personnel Manger of the second respondent and questioned him as to why he was being sent out of duty. After the Personnel Manager called him there was hot exchange of words between the workman and Personnel Manager resulting in the management suspending nine of its workers including the four signatories to the application for registration of the Trade Union, on 28.5.2005, on the ground of misconduct in connection with the said incident. Though the petitioner Union was registered on 1.6.2000, first respondent is not taking steps to restrain the management of the second respondent from continuing with its efforts to strangulate the petitioner Union. Since he is the only educated person among the office bearers and is the general secretary of the petitioner Union, members of the union are seeking his assistance in ventilating their grievances. But in order to deprive the members of the petitioner Union of the assistance of a competent person available to help them, management of the second respondent is harassing him. Hence, the Writ Petition.

(3) In his counter affidavit first respondent *inter alia* stated that in pursuance of the application for registration of the petitioner Trade Union, a verification was conducted on 22.5.2000 and later the trade union was registered on 1.6.2000. Since the petitioner was not the General Secretary of the petitioner union on the date of complaint i.e. on 24.5.2000, no action can be initiated on the complaint dated 24.5.2000 on behalf of the petitioner, which was not in existence by them. As the complaint made by the deponent to the affidavit filed in support of the writ petition was an individual complaint but not a complaint by the Union, that complaint was not entertained by him. He is not aware of the ill health of the deponent to the affidavit filed in support of the writ petition and about a ticket being forcibly placed in his hand, asking him to leave for Gurgaon, and is not made aware of the suspension of nine workers and service of a charge sheet on them. Through his letter dated 27.5.2000,

addressed to the second respondent, the deponent to the affidavit filed in support of the writ petition sought leave on medical grounds. So it is clear that there was no protest by him stating that his being sent for training is an order of transfer in disguise. Since no other existing members in the petitioner complained about any unfair labour practice by the second respondent he did not take any action against the second respondent.

(4) The General Manager of the second respondent filed his counter affidavit on its behalf *inter alia* contending that inasmuch as the deponent to the affidavit filed in support of the writ petition is a Supervisor drawing more than Rs.1600/- per month, he is not a 'workman' within the meaning of the Act. With a view that he would improve his skills the deponent to the affidavit filed in support of the writ petition was asked to go for training to Gurgaon. It is not a transfer indisguise. Instead of proceeding on leave he submitted an application for leave on the ground of ill health. As he re-joined duty after becoming fit he was asked to go on training but he refused to receive the letter and so a charge sheet was issued to him. The averment that four out of seven signatories to the application for registration of the petitioner union were issued charge sheet is not correct. In fact nine employees of the second respondent were charge sheeted for specific acts of misconduct reported against them, in which enquiries are in progress. So petitioner is not entitled to any relief.

(5) The contention of the learned counsel for the petitioner is that the second respondent establishment with a view to thwart the attempt of its workers to form a Trade union had directed the General Secretary designate of the petitioner Union to go on training, which is but a transfer in disguise, and apart from that as some of the other signatories to the application for registration of the petitioner also were charge-sheeted by the second respondent, it is clear that the second respondent is trying to thwart the attempts of its workers in forming a Trade union and so it is an unfair trade practice within the meaning of Section 2 (ra) of the Act, in view of entry 7 of the 5th Schedule in the Act, which lays down that mala fide transfer of a workman from one place to another, is an unfair trade practice. It is his contention that the General Secretary of the petitioner Union who underwent training at Chennai being asked to go for training to Gurgaon, a very distant place from Hyderabad is only with a view to keep him away from Hyderabad and so it is but a transfer in disguise and as the first respondent without taking into consideration the said fact and the various representations submitted by the petitioner Union, is not taking any action against the second respondent a direction may be given to the first respondent to consider the application to prosecute the second respondent for indulging in unfair labour practices.

(6) Heard the learned Government Pleader for Labour, who reiterated the facts mentioned in the counter affidavit of the first respondent.

(7) The contention of the learned counsel for the second respondent is that in view of Section 2(s)(iii)(iv) persons who are employed in administrative capacity and whose pay exceeds one thousand six hundred rupees per month are not 'workmen' within the meaning of the Act, and as the deponent to the affidavit filed in support of the writ petition clearly

admitted in his affidavit that he is working as supervisor, and as the statement made in the counter affidavit filed on behalf of the second respondent that the deponent to the affidavit filed in support of the writ petition is drawing a salary of more than 8,000/- per month is not denied and disputed by filing a reply affidavit, and as the deponent to the affidavit filed in support of the application had in the subsequent proceedings initiated against him admitted that he is drawing more than 8,000/- per month as salary as a supervisor, the provisions of the Act do not apply to him. It is his contention that, the second respondent with a view to see that the deponent to the affidavit filed in support of the petition would further improve his skills deputed his for training to Gurgaon, but he went on leave on medical grounds and had, after rejoining duty, refused to go to training, and so charges were framed against him and was later removed from service, and in any event since deputing a person to go on training is neither a transfer nor a transfer in disguise, and as the first respondent stated the reasons for his not acting on the representation of the petitioner dated 24.5.2000, in his counter affidavit petitioner is not entitled to any relief.

(8) Most of the grievances referred to in the affidavit filed in support of the writ petition relate to the happenings prior to 1.6.2000 i.e, the date on which the petitioner trade union was registered. In view of the language in which Section 8 of the Trade Unions Act is couched, it is clear that registration of a Trade Union does not relate back to the date of application for its registration. As the petitioner Union was registered as a Trade Union only on 1.6.2000, it cannot be said that it was in existence prior to 1.6.2000. In his counter affidavit first respondent stated that inasmuch as the petitioner trade union was registered on 1.6.2000, and as the incidents referred to in the affidavit filed in support of the petition took place prior thereto, he cannot initiate any action against the second respondent as no trade union was in existence by the date of those incidents.

(9) Even assuming that the registration of a trade union relates back to the date of application, first respondent cannot be found fault for his not acting upon the complaint dated 24.5.2000, submitted on behalf of the petitioner because the incidents mentioned therein relate to the action taken by the second respondent against the deponent to the affidavit filed in support of the writ petition in connection due to his unwillingness to go for training to Gurgaon, because he is not a 'workman' within the meaning of the Act, as he himself admitted that his position is that of a supervisor in the laundry department' and as he admittedly was drawing salary of more than 1,600/- per month from the second respondent.

(10) After receiving the intimation that he was deputed for training to Gurgaon, the deponent to the affidavit filed in support of the petition, instead of complaining that the said action is a transfer in disguise, sought leave on medical grounds which, admittedly, was sanctioned by the second respondent. Only when he refused to go for training after rejoining did the second respondent initiate disciplinary action against him. Probably as a defence to the said charge he might have thought it to file this petition to buttress his case and bring pressure on the second respondent. Question whether sending an employee for training to

improve his skills can be treated as a transfer in disguise is doubtful, because the period of training would be short, and immediately after completion of the training he would come back and has to report to duty at the place from where he was sent for training.

(11) In the above circumstances and in view of the counter affidavit of the first respondent, I find no merit in this petition and the Writ Petition is dismissed. No order as to costs. If when the second respondent indulges in any unfair trade practices, it is always open to the petitioner to bring those facts to the first respondent, who shall act as per law.

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C.Y.

SOMAYAJULU, J

Dated: 11.12.2007
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